

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1176 OF 2015

New Kasturba Shikshan Prasarak Sanstha ... Petitioner

Vs

1 Municipal School Board, Solapur & Ors. ... Respondents

**WITH
WRIT PETITION NO. 1177 OF 2015**

Shastri Shikshan Prasarak Mandal ... Petitioner

Vs

1 Municipal School Board, Solapur & Ors. ... Respondents

Mr. I.M. Khairadi for the Petitioners.

Mrs. S.D. Vyas, 'B' Panel Counsel for the Respondent Nos.3 & 4.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

TUESDAY, 27TH NOVEMBER, 2018

P.C. :

1 The petitioners are questioning the order dated 20th August, 2014. They are also questioning the permissions granted on 21st May, 2010 / 18th June, 2010, issued by the Administrative Officer, Municipal School Board, Solapur, in favour of the fifth

respondent to this petition.

2 The facts in the first petition are enough to dispose of both matters. The petition is by a Management through the Vice President which Management is running a Primary School for standards I to VII in Urdu medium. It is a minority institution. It claims to be recognised and receiving hundred per cent grant-in-aid from the respondent Nos.1 to 4.

3 The fifth respondent before this Court is an Educational Trust managing and running various Junior Colleges besides a Primary Urdu Medium School. That was initially being conducted at Damani Nagar, Solapur. It has been shifted in the vicinity or neighbourhood of the petitioner-school. The complaint of the petitioner is that this shifting has generated unhealthy competition and that is not conducive to quality education.

4 The petitioner was granted permission way back in 1970. It may be that the student strength is dwindling and has gone down, but that is no ground to encourage any school to come up within less than one kilometer distance from the petitioner –

school. The ill effects of all this are for everybody to see.

5 Mr. Khairadi appearing for the petitioners in both matters would submit that having allowed the petitioner to function for all these years and with the approved student strength, now the authorities have encouraged another school to be set up in the vicinity. Given the response of students to language schools and particularly Urdu medium schools, it will not be conducive to maintaining the quality of education. Hence, the order is arbitrary and should be quashed and set aside.

6 It is evident that the Administrator of the Municipal School Board received a proposal from the respondent No.5. They submitted that this Management is running Utkrushta Urdu Vidyalaya, Solapur. It was then conducted from Damani Nagar. The request made on 29th June, 2009, to the Deputy Director of Education, Pune Region, Pune, is that this school be allowed to be shifted to 51/4, Sant Tukaram Nagar, New Pachapeth, Jawahar Nagar, Solapur. After receipt of this proposal from the first respondent, it is evident that this request was considered and a conditional permission was granted on 18th June, 2010. The

conditions denote as to how the fifth respondent was to take precautions not to affect the working and smooth functioning of the existing schools in the vicinity. The other condition is equally important that in the event any complaints are received, the authorities would promptly address them and may be the permission will be cancelled.

7 However, aggrieved and dissatisfied with this exercise initially two writ petitions were brought before this Court and by a detailed order delivered on 26th November, 2013, these petitions came to be disposed of. The Deputy Director of Education was to hear not only the petitioner, but the other contesting respondent, namely, respondent No.5 and pass a fresh order.

8 Accordingly, he passed a fresh order which is challenged in this petition. . Mr. Khairadi may argue that we should scrutinize the legality and validity of this order even after a lapse of four years for the issue is still alive according to him.

9 However, on a careful perusal of the impugned order, we are not impressed by his submission. The order of the Deputy

Director records in paragraph 6.1 the remarks of the Administrative Officer of the Municipal School Board - respondent No.1. The report says that he visited all three schools, including that of the petitioner. The petitioner's school is New Kasturba Urdu Primary School. It is located in a building belonging to the Management. It is located in four rooms. However, there is no laboratory, ramp, playground, boundary wall, kitchen shed and a proper western type toilet. There is a problem of electricity as well. There is a shortage of toilet blocks. On the other hand, the other schools are functioning with all these facilities. Earlier they were not available and that is why the shifting was permitted. Now, the earlier school having been visited what has been found at site is that the fifth respondent has its own building with ten rooms. It has also been found that this school is also lacking in the facilities such as a playground and does not have a kitchen shed. The required rooms are also not available and two divisions are combined. This is also evident from the fact that the student strength is dwindling and has gone down even when the respondent No.5 transferred or shifted two schools from Damani Nagar to the present location. The student strength of the petitioner also has gone down.

10 It is common ground that the language schools today are in dire straits. It may be that exclusive Urdu medium schools are existing, but bare existence is different from effective and smooth functioning. The remarks in the report make very interesting reading. In fact, both schools are not working to the satisfaction of the authorities. Once students strength has gone down considerably and parents as also their children are moving towards English medium schools even if they are privately managed and administered, then, all the more we do not think that we should entertain this petition. We are of the firm view that in the event the Deputy Director is of the opinion that none of these schools are functioning properly, then, merely because he has upheld the shifting permission granted to the respondent No.15 should not preclude or prevent him from issuing such directions as are permissible in law so that the first respondent-State and the existing students and the staff in the Urdu medium schools are not inconvenienced further. These schools may have, by passage of time, stopped functioning altogether, but if they have not, then, the Deputy Director can cause an inspection to be carried out and thereafter the Administrator can be directed to

do the needful. Once we record this opinion, then, all the more, we are disinclined to interfere in our writ jurisdiction with the findings of fact which are not found to be perverse at all. There are no *mala fides* which can be attributed to statutory authorities either. They have acted in terms of the order passed by this Court and considered the rival contentions at length. Once we are satisfied that the exercise carried out is fair, just and equitable, then, we do not think that we can interfere with the findings rendered on merits of the issue. Hence, both these petitions are dismissed, but with no order as to costs.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.